

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18704.2. Determining Whether Directly or Indirectly Involved in a Governmental

Decision: Interest in Real Property.

(a) Real property in which a public official has an economic interest is directly involved in a governmental decision if any of the following apply:

(1) The real property in which the official has an interest, or any part of that real property, is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. For purposes of subdivision (a)(5), real property is located "within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision" if any part of the real property is within 500 feet of the boundaries (or proposed boundaries) of the redevelopment project area.

(2) The governmental decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of the real property in which the official has an interest or a similar decision affecting the real property. For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the real property in which the official has an interest.

(3) The governmental decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of the real property in which the official, has an interest.

(4) The governmental decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on the real property in which the official has an interest.

(5) The governmental decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(6) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or improved services.

(b) Notwithstanding subdivision (a) above, real property in which a public official has an interest is not directly involved in a governmental decision, but is instead indirectly involved if:

(1) The decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category, which shall be analyzed under 2 Cal. Code Regs. section 18705.2(b).

(2) The decision solely concerns repairs, replacement, or maintenance of existing streets, water, sewer, storm drainage or similar facilities.

(3) The decision solely concerns the adoption or amendment of a general plan and all of the following apply:

(A) The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is an economic interest of the public official, or by a person representing either the public official or an economic interest of the public official.

(B) The decision requires a further decision or decisions by the public official's agency prior to implementing the planning or policy objectives. Examples of further decisions include, but are not limited to, permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

(C) The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and economic interests of the official are not singled out.

(D) The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

(c) Definitions -- General Plans. The definitions below apply to this regulation:

(1) A decision "solely concerns the adoption or amendment of a general plan" when the decision, in the manner described in Government Code sections 65301 and 65301.5, grants approval of, substitutes for, or modifies any component of, a general plan, including elements, a statement of development policies, maps, diagrams, and texts, or any other component setting forth objectives, principles, standards, and plan proposals, as described in Government Code sections 65302 and 65303.

(2) "General plan" means "general plan" as used in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 5, sections 65300, et seq.

(3) "Specific plan or its equivalent" means a "specific plan" or any equivalent plan

adopted by the jurisdiction to meet the purposes described in Government Code, Title 7 (Planning and Zoning), Division 1 (Local Planning), Article 8, sections 65450, et seq.

(d) Determining the applicable materiality standard.

(1) If the real property in which the public official has an economic interest is directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(a).

(2) If a real property interest is not directly involved in a governmental decision, apply the materiality standards in 2 Cal. Code Regs. section 18705.2(b).

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

HISTORY

1. New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).

2. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).

3. Editorial correction of 1 (Register 2000, No. 25).

4. Amendment filed 1-16-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).

5. Amendment filed 2-18-2003; operative 2-18-2003. Submitted to OAL for filing pursuant to

Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924,
California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992
(FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements)
(Register 2003, No. 8).

6. Amendment of subsections (b) and (b)(1), new subsections (b)(3)-(c)(3), subsection relettering and amendment of newly designated subsections (d)(1)-(2) filed 9-9-2004; operative 9-9-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 37).
7. Editorial correction of subsection (b)(3)(A) (Register 2005, No. 38).